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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

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No. 79-1734

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ROBERT PARRATT and
FRANCIS LUGENBILL,

*Petitioners,*

vs.

BERT TAYLOR, JR.,

*Respondent.*

---

ON A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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# RESPONDENT'S MOTION TO DISMISS THE WRIT OF CERTIORARI

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Submitted by:

KEVIN COLLERAN
1900 First National Bank Building
Lincoln, Nebraska 68508
Telephone: 402/474-6900

*Counsel for Respondent*

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RESPONDENT'S MOTION TO DISMISS
THE WRIT OF CERTIORARI

Respondent hereby respectfully moves that the writ of certiorari in this case be dismissed, and that the case be remanded to the United States Court of Appeals for the Eighth Circuit with instructions to remand to the United States District Court for the District of Nebraska, so that the order entered by that court, which is the subject of this case, filed on April 27, 1979, can be vacated, or in the alternative, the motion to dismiss, a copy of which is attached hereto, filed, and an order entered accordingly.

This case commenced on March 24, 1976, with the Respondent asking for compensatory damages in the amount of $23.50, with interest, along with punitive damages in the amount of $1,000 from each of the Petitioners. The claim for punitive damages was subsequently abandoned.

Respondent, at the time, was incarcerated at the Nebraska Penal and Correctional Complex. The Petitioners are, respectively, the Warden of the Nebraska Penal and Correctional Complex and the individual in charge of the hobby center from wherein the Respondent's property, valued at $23.50, disappeared.

This case was tried on a stipulated set of facts pursuant to a motion for summary judgment filed on June 5, 1978. On October 25, 1978, the court filed its Memorandum Opinion and in April of 1979, the court entered its order pursuant to that Memorandum Opinion, and from which the Petitioners herein seek relief. Said order was appealed to the United States Court of Appeals for the Eighth Circuit by the Petitioners on May 30, 1979 and the order of the United States District Court for the District of Nebraska was affirmed by the United States Court of Appeals for the Eighth Circuit on January 29, 1980. The Petitioners' petition for rehearing to the United States Court of Appeals for the Eighth Circuit was denied on February 29, 1980, and the petition for certiorari was filed on May 1, 1980, with certiorari being granted on October 20, 1980.

The relief sought by the Petitioners from this Court is the vacation or reversal of the order entered by the District Court for the District of Nebraska.

Respondent desires to consent to the vacation of the decree entered on April 27, 1979 by the United States District Court for the District of Nebraska, or, in the alternative, file a motion to dismiss the complaint with an order entered in accordance therewith, for the reason that the Respondent has been paid by a person not a party to this action all sums due and owing him under said order. While the case is in this Court, however, the trial court is without jurisdiction. Respondent submits, therefore, that this Court should dismiss the writ of certiorari and remand this case to the trial court so that the order entered therein may be vacated or the complaint dismissed.

For these reasons, Respondent suggests that the issues raised by Petitioners in this case no longer affect either of the parties, that no case or controversy is before this Court, and that the writ should be dismissed and the case remanded so that the order of the trial court can be vacated or the complaint dismissed.

Respectfully submitted,

Kevin Colleran

KEVIN COLLERAN
1900 First National Bank Building
Lincoln, Nebraska 68508
Telephone: 402/474-6900

*Counsel for Respondent*

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# AFFIDAVIT OF RESPONDENT

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Submitted by:

KEVIN COLLERAN
1900 First National Bank Building
Lincoln, Nebraska 68508
Telephone: 402/474-6900

*Counsel for Respondent*

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ON WRIT OF CERTIORARI TO THE
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AFFIDAVIT OF RESPONDENT

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STATE OF WASHINGTON )
) ss.
COUNTY OF _____ )

BERT TAYLOR, JR., being first duly sworn, deposes and states as follows:

1. That I am presently incarcerated in the State of Washington.

2. That on March 24, 1976, while incarcerated in the Nebraska Penal and Correctional Complex, I filed an action in the United States District Court for the District of Nebraska based upon 42 U.S.C. § 1983 against Petitioners Robert Parratt and Francis Lugenbill, to redress the deprivation under color of state law rights secured by the Constitution of the United States; more specifically, that I was deprived of property valued at $23.50.

3. That on April 22, 1979, the United States District Court for the District of Nebraska, the Honorable Albert G. Schatz presiding, entered judgment in my favor and against the Petitioners in the amount of $23.50, plus interest as allowed by law from April 21, 1975.

4. That the Petitioners appealed the decision of the trial court to the United States Court of Appeals for the Eighth Circuit, and that on January 29, 1980, the United States Court of Appeals for the Eighth Circuit affirmed the decision of the trial court.

5. That on May 1, 1980, the Petitioners petitioned the United States Supreme Court for an order granting certiorari and that on October 20, 1980, this Court granted Petitioners' petition.

6. That I have now received the $23.50, plus interest from April 21, 1975, as allowed by law, and that for that reason, wish to dismiss my case filed in the United States District Court for the District of Nebraska, or, in the alternative, have the order of the trial court of April 29, 1979, vacated.

7. That attached hereto is a copy of the Motion to Dismiss that I have authorized my court-appointed attorney to file in the United States District Court for the District of Nebraska.

8. That I am willing to provide the Petitioners herein a release, as attached hereto, for any and all claims I may have against them as a result of the disappearance of my hobby materials while incarcerated in the Nebraska Penal and Correctional Complex; which are the subject matters of the action I filed on March 24, 1976.

Further affiant sayeth not.

_____
Bert Taylor, Jr.

Subscribed and sworn to before me this ___ day of December, 1980.

_____
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | |
|---|---|
| BERT TAYLOR, JR., Plaintiff, vs. ROBERT PARRATT and FRANCIS LUGENBILL, Defendants. | Civil No. 76-L-57<br><br>MOTION TO DISMISS |

COMES NOW the plaintiff, through his court-appointed counsel, and hereby moves the court to enter an order dismissing plaintiff's Complaint for the reason that plaintiff has been paid for his lost hobby materials, plus interest, and for that reason there no longer exists a controversy between the parties.

BERT TAYLOR, JR., Plaintiff

By_____
Kevin Colleran
1900 First National Bank Building
Lincoln, Nebraska 68508
Telephone: 402/474-6900

Court-Appointed Counsel for
Plaintiff Bert Taylor, Jr.

CERTIFICATE OF SERVICE

I, Kevin Colleran, hereby certify that a copy of the foregoing Motion to Dismiss was served upon the defendants by and through their counsel of record, J. Kirk Brown, Assistant Attorney General, State of Nebraska, 2115 State Capitol Building, Lincoln, Nebraska 68509 by United States mail, sufficient postage prepaid on this ___ day of _____, 1980.

_____
Kevin Colleran

# R E L E A S E

I, BERT TAYLOR, JR., hereby completely, finally and forever release and discharge ROBERT PARRATT and FRANCIS LUGENBILL of and from any and all claims and causes of action of every name, nature and description, which I have against Robert Parratt and Francis Lugenbill as a result of the disappearance of hobby materials ordered by me while incarcerated in the Nebraska Penal and Correctional Complex.

I HAVE READ THE FOREGOING RELEASE AND UNDERSTAND IT.

Executed this ___ day of _____, 19__.

_____
Bert Taylor, Jr.

STATE OF WASHINGTON )
) ss.
COUNTY OF _____ )

On this ___ day of _____, 19__, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Bert Taylor, Jr., who executed the above and foregoing Release and acknowledged that he had read the same, understood its contents and purposes, and executed the same as his voluntary act and deed.

WITNESS my hand and notarial seal on the day and year first above written.

_____
Notary Public

# R E L E A S E

I, BERT TAYLOR, JR., hereby completely, finally and forever release and discharge ROBERT PARRATT and FRANCIS LUGENBILL of and from any and all claims and causes of action of every name, nature and description, which I have against Robert Parratt and Francis Lugenbill as a result of the disappearance of hobby materials ordered by me while incarcerated in the Nebraska Penal and Correctional Complex.

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CERTIFICATE OF SERVICE

I, KEVIN COLLERAN, hereby certify that a copy of the Respondent's Motion to Dismiss The Writ of Certiorari, the Affidavit of Respondent in support of the Motion to Dismiss, and the Release were served upon the Petitioners herein by mailing a true and correct copy of each document to the Honorable Paul L. Douglas, Attorney General for the State of Nebraska and J. Kirk Brown, Assistant Attorney General for the State of Nebraska, 2115 State Capitol Building, Lincoln, Nebraska 68509 by United States mail, sufficient postage prepaid on this 11th day of December, 1980.

Kevin Colleran

Kevin Colleran
Attorney for Respondent
1900 First National Bank Building
Lincoln, Nebraska 68508
Telephone: 402/474-6900